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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Applications of)	MM Docket No. 93-107	FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY
DAVID A. RINGER)	File No. BPH-911230MA	
ASF BROADCASTING CORPORATION)	File No. BPH-911230MB	
WILBURN INDUSTRIES, INC.)	File No. BPH-911230MC	
SHELLEE F. DAVIS)	File No. BPH-911231MA	
OHIO RADIO ASSOCIATES, INC.)	File No. BPH-911231MC	

For Construction Permit
For New FM Radio Station at
Westerville, Ohio

To: The Review Board

**REQUEST FOR
ACCEPTANCE OF RESPONSE**

Wilburn Industries, Inc. ("Wilburn"), by its attorneys, hereby submits its Request for Acceptance of Response to the Oppositions to its July 15, 1994 Petition for Leave to Amend filed by Shellee F. Davis ("Davis") and Ohio Radio Associates ("ORA"), stating as follows:

In its July 15, 1994 Petition for Leave to Amend, Wilburn sought leave to amend its application to include a new engineering proposal which was required due to the loss of the transmitter site initially specified in its application. The amendment also included a certification of the availability of

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Wilburn's new site and, because of the increased costs arising from the loss of its initial site, a new and revised financial certification. Davis and ORA filed their Oppositions to Wilburn's Petition on July 22, 1994.

The Commission's rules do not contemplate the filing of replies to such oppositions in ordinary circumstances. In this instance, however, the Oppositions advance arguments which in material part misrepresent facts already before the Commission and which, if accepted by the Review Board, could have a substantial adverse impact upon the prosecution of Wilburn's application.

For example, as shown in Wilburn's Response, Davis seeks to raise questions about Wilburn's due diligence and candor, pointing to Wilburn's statement that it had learned that its initial site was unavailable on April 7, 1994, although the letter from the owner of Wilburn's new site, Mrs. Dolores Buell, was dated March 31, 1994. See Davis Opposition, pp. 6-7. Davis fails to advise the Board, however, that -- as fully explained in an earlier Wilburn amendment filed on April 13, 1994 -- Wilburn: (1) learned in March, 1994 that its initial site had been sold; (2) was advised by the buyer that the site might not continue to be available; (3) obtained a letter from Mrs. Buell which provided reasonable assurance of an alternative site; (4) was advised by the buyer of its initial site that the site would

continue to be available, and so continued to specify that property in its application; (5) was later advised by such buyer in April, 1994, that he had changed his mind and would not make the initial site available after all; and (6) promptly advised the Commission of the fact that it would be amending its application to specify the alternative site for which it earlier had obtained reasonable assurance. Moreover, a copy of Mrs. Buell's March 31, 1994 letter was included in Wilburn's April 13, 1994 amendment. Thus, Davis knows why the assurance letter for Wilburn's new site was dated before Wilburn was finally advised that its initial site would not be available. Davis also knows why Wilburn did not request its consulting engineer to draft an amendment to its technical proposal when it first obtained that letter. Her Opposition, accusing Wilburn of a lack of candor and the failure to proceed with due diligence, therefore constitutes nothing less than an attempt to mislead the Board as to facts already before the Commission.

Similarly, Davis asserts that she has "learned" that Dolores Buell was not the owner of the site when Mrs. Buell provided Wilburn with its assurance letter, because the land was owned by her deceased husband and, as Executor of his estate, Mrs. Buell only "controls the owner." See Davis Opposition, pp. 7-8. Davis does not reveal, however, that in its April 13, 1994 Amendment, Wilburn submitted its letter from Ms. Buell, who stated:

I represent that I am the owner of the real estate and that I am the personal representative of the estate of Hugh Buell, my late husband, and that I have full authority to enter into a lease agreement.

The letter was also signed twice, once by Dolores Buell and once by Dolores Buell as Executor of the Estate of Hugh Buell. The argument propounded by Davis, that Wilburn has not obtained reasonable assurance from the appropriate party, therefore is both plainly erroneous and patently designed to mislead the Board.

ORA's Opposition also would mislead the Board, alleging that Wilburn has not advised the Commission when it learned that its initial site was no longer available. See ORA Opposition, p. 1. In fact, Wilburn's April 13, 1994 amendment recited that: (1) Wilburn was advised by letter received by Wilburn on March 7, 1994, that its site had been sold by the original owner, and (2) Wilburn was later advised by telephone call on April 8, 1994, that the buyer had changed his mind and would not continue to make such site available.

As shown above, Davis and ORA have argued that the Review Board should reject Wilburn's amendment by advancing allegations which they have reason to know are patently misleading. In these circumstances, where the facts may be confused and where the attention of the Board was not directed to the contents of documents previously filed with the Commission, the acceptance

and consideration of Wilburn's responsive pleading is appropriate and warranted. Accordingly, it is respectfully requested that the Board accept and consider the Response to Oppositions which is being filed by Wilburn contemporaneously with the instant Request.

Respectfully submitted,
WILBURN INDUSTRIES, INC.

By: 
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Dated: August 2, 1994

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CERTIFICATE OF SERVICE

I, Tracy A. Holden, a secretary in the law firm of Brown, Nietert & Kaufman, Chartered, do hereby certify that on this 2nd day of August, 1994, I caused copies of the foregoing "Request for Acceptance of Response" to be delivered by first class mail, postage prepaid, to the person named below:

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